

In re ) Fair Hearing No. 10,405  
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Appeal of )

The petitioner appeals the Department's determination that she was overpaid ANFC benefits due to her failure to report the unemployment of her children's father.

A. The following facts are found as the result of an evidentiary hearing:

2. Prior to the matter at issue, neither the petitioner's two other children nor their father has ever applied for ANFC benefits.

3. For many years, the petitioner has dutifully appeared at all required interviews and has given the Department information when requested. She has signed statements on a regular basis which acknowledge that she understands her obligation to report changes and has, until this matter arose, apparently reported all relevant changes. A copy of the latest

form signed by the petitioner agreeing to report changes is attached hereto as "DSW #1" and incorporated by reference. The petitioner's worker has also advised her generally at every review to report all changes in her household's circumstances.

4. At her interviews over the years, the petitioner came to believe that the income of the father of her non-ANFC receiving children was irrelevant in determining her and her other child's eligibility for ANFC because the amount of his income was never requested. When the non-ANFC children's father became unemployed for the first time ever on November 28, 1990, it did not occur to the petitioner that this change was important to her benefit amount and she did not immediately report it. The petitioner genuinely did not understand the need to report the fact of his loss of a job to the Department. Her failure to report his job loss was nothing more than a reasonable and honest mistake.

5. On February 26, 1991, during the course of a routine review, the petitioner mentioned to her intake specialist that her non-ANFC children's father was not working. Based on that information, the worker told the petitioner that as the children of an unemployed parent, her other two children had to be included in the assistance group as of November 28, 1990 and that their father's unemployment insurance income had to be considered in figuring her benefits.

6. Although he did not want ANFC assistance, the children's father came in and applied for benefits. His unemployment compensation of \$172.00 per week caused the petitioner's grant to be reduced from \$484.00 to \$86.00 per month.

7. On March 13, 1991, the petitioner was mailed a notice of overpayment claiming that she had been overpaid \$1,280.00 for the period from January of 1991, through March of 1991, due to a change in the deprivation factor of her children which had not been reported in a timely manner. That total, as will be seen below, was actually erroneous.

B. The following additional facts were stipulated to by the parties:

1. The total resources owned by [father] and his two children during January through March, 1991 consisted of \$25.00 in a bank account. The account had both [father's] and [petitioner's] names on it.

2. [Father] did not report any income besides \$172 in unemployment compensation for the time at issue.

3. \$300 is the maximum shelter allowance and that is the amount allowed by the Department to the petitioner when her grant is calculated without [father] and his two children.

4. At the time at issue, if [father] and his two children were considered alone for ANFC eligibility, the Department would have used \$300, the maximum allowable amount.

5. The correct calculation of the overpayment made to [petitioner] during the period at issue is as follows:

Actually Received by [petitioner]:

January	\$ 484.00
February	484.00
March	<u>290.00</u>

Total received \$1,258.00

Actually Eligible for:

January	\$ 86.00
February	86.00
March	<u>0.00</u>

Total eligible for \$ 172.00

Therefore,

\$1,258.00	Received
<u>- 172.00</u>	Eligible for
\$1,086.00	Overpayment

#### ORDER

The decision of the Department that the petitioner was overpaid \$1,086.00 is affirmed.

#### REASONS

Under W.A.M. § 2242, an ANFC assistance group:

Must include all siblings (including half-siblings) who live with the dependent child or children, who are also deprived of parental support and who qualify under the ANFC age criteria, as defined in policy. The parent(s) of each and every child included in the ANFC assistance group must also be included in the ANFC assistance group if he or she lives in the home with the children. (emphasis added)

The regulations further define a child as being deprived of parental support if:

1. His or her biological or adoptive parent or stepparent meets the definition of "unemployed parent" and expresses willingness to cooperate with Reach Up participation requirements, including acceptance of employment, and
2. He or she is living with the unemployed parent, and
3. Income and resources available for his or her support are insufficient to meet applicable basic needs according to Department standards.

Either parent can be the "unemployed parent", as long as he or she meets the requisite eligibility criteria.

The petitioner does not assert that her two non-ANFC children are outside of the definition of children deprived of parental support when their father is unemployed. There is no allegation that he does not meet the definition of "unemployed parent" which is set out in detail over three pages of regulations (see W.A.M. § 2333.1) nor that her children are not living with their unemployed parent. In addition, the evidence shows that resources available to the children (\$25.00) are well under the applicable \$1,000.00 limit. W.A.M. § 2261. It must also be concluded that the monthly income available to the children \$688.00 (\$172.00 x 4.3 weeks) is below the Department's applicable basic need standard of \$956.00 for a family of three. (\$656.00 for basic needs and \$300.00 for shelter needs.) See W.A.M. § 2245.2 and 2245.3<sup>1</sup> The petitioner's argument is not that her two non-ANFC receiving children meet the Department's definition of children deprived of support but rather that they have been forced to apply for ANFC benefits when they

did not want them. She also points out the gross unfairness of an action which gives her family less ANFC benefits to live on when her two non-ANFC children's father is unemployed than when he is employed.

The petitioner's consternation in this matter is completely comprehensible because the result of the Department's regulation in her case does not make much sense. However, the Department's regulation is based on the federal statutory and regulatory requirements of the Deficit Reduction Act (DEFRA) of 1984 which have been upheld as constitutional by the United States Supreme Court. Bowen v. Gilliard, 483 U.S. 587 (1987). Because of this opinion, the Board has felt constrained to uphold this result. See Fair Hearing No. 8190.

Under these regulations, when the petitioner's children's father becomes unemployed, he and those two children must apply for ANFC and he must be included in the unit if they otherwise meet the definition for children deprived of parental support. Therefore, although the petitioner's children's father's income when he is working is irrelevant, the fact of his working or not is highly relevant in determining the petitioner's ANFC eligibility.

While the forms used by the Department advising persons to report changes could, no doubt, be improved on, it cannot be found under the above facts that the Department failed to advise the petitioner of her obligation to report changes in her household, including the unemployment of all members.

The Department's forms and the worker's general exhortations to report all changes, at least put the petitioner on notice that changes in income and household composition of any type should be brought to the attention of the workers. The petitioner obviously genuinely misunderstood the reporting requirement based upon her own lengthy experience and drew a conclusion about income which was incorrect. However, it cannot be found that the Department misled her to that conclusion.

In any event, under the Department's ANFC regulations, all overpayments of assistance regardless of who made the error must be recouped. W.A.M. § 2234.2 That can occur by a repayment by the petitioner or through recoupment from her grant. Had the Department made an error which led to the overpayment, which cannot be found here, the recoupment would be limited to 5% of her grant. However, as the error, however excusable it may be, appears to be hers, recoupment may take place at a 10% level.<sup>2</sup> W.A.M. § 2234.2

As the petitioner has agreed that she received \$1,086.00 more than the Department's regulations, if upheld, would allow, it must be found that she has indeed been overpaid \$1,086.00 which may be recouped at a 10% per month level.

#### FOOTNOTES

<sup>1</sup>Although the children's income is below the basic needs standard, it is above the ratably reduced amount,

\$631.00 (\$956.00 x .66,), which the Department will actually pay. W.A.M. 3 224.5,24. Therefore, even though income eligible, the children would actually receive no benefits.

<sup>2</sup>Under the recently-decided case of Burbo v. DSW, Vt. Supreme Court Docket No. 90-569 (June 21, 1991), it appears that the petitioner may petition the Department to reduce the rate of recoupment if the 10% rate poses a "hardship" on her.

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